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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,	)	No. P1300CR20081339
	)	
Plaintiff,	)	Div. 6
	)	
vs.	)	<b>RESPONSE TO STATE'S</b>
	)	<b>MOTION TO QUASH</b>
STEVEN CARROLL DEMOCKER,	)	<b>SUBPOENAS DUCES TECUM</b>
	)	
Defendant.	)	
	)	
	)	
	)	

Steven DeMocker, by and through counsel, hereby responds to the State's Motion to Quash Subpoenas Duces Tecum and requests that this Court deny the State's Motion. This response is based on the due process clause, the confrontation clause, the right to a fair trial, and the Eighth Amendment as well as Arizona counterparts, Arizona Rules of Evidence, Arizona Rules of Criminal Procedure and the following Memorandum of Points and Authorities.

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## MEMORANDUM OF POINTS AND AUTHORITIES

On July 27, 2010, the defense served subpoenas duces tecum to the Yavapai County Sheriff's Office and Yavapai County Human Resources Department for certain job-related personnel records for YCSO employees Luis Huante, John McDormett and Doug Brown. On August 5, 2010, the State filed a Motion to Quash these subpoenas.

The defense had previously requested these records from the Yavapai County Sheriff's Office in 2009. In response, the Sheriff's Office disclosed only training records and directed the defense to the County Human Resources Department for the remainder of the records.

As a result, the defense served subpoenas duces tecum to both the Yavapai County Sheriff's Office and Yavapai County Human Resources Department for the remainder of the records.

**I. The County Human Resources Department Records Do Not Fall Under Arizona Rule of Criminal Procedure 15.1 and a Subpoena is Therefore Appropriate.**

As the State's Motion to Quash acknowledges, the State's duty to disclose records under Rule 15.1 extends to the prosecutors office, law enforcement agencies and others participating in the investigation or evaluation of the case. *See* Ariz. R. Crim P. 15.1(f). The County Human Resources Department does not fall within any of these categories. Therefore, under Rule 15.1 the State is not obligated to provide these documents to the defense. Because Rule 15.1 does not apply to these documents a subpoena duces tecum under ARS 13-4071(d) issued to the County Human Resources Department is and was appropriate. For these reasons, the State's Motion to Quash the subpoena to the County Human Resources Department should be denied.

1           **II. If Arizona Rule of Criminal Procedure 15.1 Does Apply to the**  
2           **Yavapai County Human Resources Department Records, the Defense**  
3           **Requests an Order Under Rule 15.1(g) for the Requested Records**

4           During the course of this investigation, YCSO employee Luis Huante was  
5           demoted and YCSO employee Doug Brown was removed as the case agent in this case.  
6           Witness testimony has evidenced a disagreement between Mr. Huante and Commander  
7           Mascher about the reason for Doug Brown's removal as case agent. Furthermore,  
8           YCSO employee John McDormett, who was the case agent appointed after Doug  
9           Brown's removal, was designated as the case agent by the County Attorney for the trial.  
10          However, Capt. Rhodes replaced him.

11          The State is well aware of these facts so the assertion in its Motion that this  
12          request for records is a "fishing expedition" is disingenuous. The State is required to  
13          disclose *Brady* material but the defense doesn't have to rely on its judgment to decide  
14          what might be *Brady*. The defense is entitled to conduct its own, independent,  
15          investigations. Therefore, the defense has a right to review the personnel and  
16          disciplinary records of these YCSO employees and what those records demonstrate  
17          about the relationship of these personnel decisions to the investigation and activities in  
18          this case.

19          If the Court determines that the Sheriff's Office subpoena should be quashed  
20          because the State is obligated to disclose the records under Rule 15.1, the defense  
21          requests an order under Rule 15.1(g) directing the State to disclose the following  
22          records with respect to Huante, McDormett and Brown:

- 23           1. Annual performance appraisals and ratings since 2005.
- 24           2. Documentation of voluntary or involuntary demotions since 2005.
- 25           3. Documentation of paid or unpaid suspensions since 2005.
- 26           4. Rate-of-pay history since hire date.
- 27           5. Records of all personnel actions taken since hire date.
- 28           6. All citizen complaints founded and unfounded since 2005.

- 1 7. All internal investigations sustained and unstained since hire date.
- 2 8. All "work-station notes" or equivalent documents/records created by supervisors
- 3 regarding the employee performance, since 2005.
- 4 9. All correspondence with the employee regarding performance, including any
- 5 performance counseling memorandums, verbal counseling, written reprimands,
- 6 or corrective action recommended and/or taken since 2005.


7 As the State's Motion admits, the Court can order "any person" to make  
8 available needed materials or information, after a showing that the "defendant has  
9 substantial need in the preparation of the defendant's case for material or information  
10 not otherwise covered by Rule 15.1, and that the defendant is unable without undue  
11 hardship to obtain the substantial equivalent by other means ... ." Ariz. R. Crim. P.  
12 15.1(g). This showing has been made by the circumstances described above, the  
13 Sheriff's Office's refusal to provide these records pursuant to a request, and the State's  
14 objection to the present subpoena. As trial is underway, the need for this information is  
15 immediate. The defense hereby requests that if the Court determines that these records  
16 are covered by Rule 15.1, it order the State to disclose these documents under Rule  
17 15.1(g) pursuant to the demonstrated need. *See e.g. State ex rel. Dean v. City Court of*  
18 *City of Tucson*, 140 Ariz. 75, 680 P.2d 211 (App. Div.2 1984) (finding city police  
19 department's internal affairs records of arresting officer were subject to in camera  
20 inspection and disclosure in criminal prosecution in order to inquire into defense  
21 contention that arresting officer had a well-known reputation for being less than truthful  
22 while testifying and in trying to justify unprofessional conduct while in the field.)

### 23 CONCLUSION

24 Defendant Steven DeMocker, by and through counsel, hereby requests that this  
25 Court deny the State's Motion to Quash or, in the alternative, order the requested  
26 documents disclosed pursuant to Rule 15.1(g).  
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1 DATED this 13<sup>th</sup> day of August, 2010.

2  
3 By:

  
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11 Attorneys for Defendant

12 **ORIGINAL** of the foregoing hand delivered for  
13 filing this \_\_\_\_ day of August, 2010, with:

14 Jeanne Hicks  
15 Clerk of the Court  
16 Yavapai County Superior Court  
17 120 S. Cortez  
18 Prescott, AZ 86303

18 **COPIES** of the foregoing hand delivered this  
19 this 13<sup>th</sup> day of August, 2010, to:

20 The Hon. Warren R. Darrow  
21 Judge Pro Tem B  
22 120 S. Cortez  
23 Prescott, AZ 86303

24 Joseph C. Butner, Esq.  
25 Jeffrey Paupore, Esq.  
26 Prescott Courthouse basket

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28 3247783